

1 Sonya D. Winner (State Bar No. 200348)

*E-mail: swinner@cov.com*

2 David M. Jolley (State Bar No. 191164)

*E-mail: djolley@cov.com*

3 COVINGTON & BURLING LLP

One Front Street

4 San Francisco, CA 94111

Telephone: (415) 591-6000

5 Facsimile: (415) 591-6091

6 Emily Johnson Henn (State Bar No. 269482)

*E-mail: ehenn@cov.com*

7 COVINGTON & BURLING LLP

333 Twin Dolphin Drive, Suite 700

8 Redwood Shores, CA 94065

Telephone: (650) 632-4700

9 Facsimile: (650) 632-4800

10 Attorneys for Defendant

11 WELLS FARGO BANK, N.A.

12  
13 UNITED STATES DISTRICT COURT

14 FOR THE NORTHERN DISTRICT OF CALIFORNIA

15 VERONICA GUTIERREZ, *et al.*,

16 Plaintiffs,

17  
18 v.

19 WELLS FARGO BANK, N.A.,

20 Defendant.  
21

Civil Case No.: CV-07-5923 WHA

**STIPULATION AND ~~PROPOSED~~  
ORDER ON LIMITED DISCOVERY  
RELATING TO CLASS COUNSEL'S FEE  
MOTION**

Honorable William Alsup

1 WHEREAS, Class Counsel's Motion for an Award of Attorneys' Fees and Costs in this case  
2 (Dkt. No. 638) includes a request that the Court order defendant Wells Fargo Bank, N.A. ("Wells  
3 Fargo") to pay attorneys' fees pursuant to California Code of Civil Procedure Section 1021.5 ("Section  
4 1021.5");

5 WHEREAS, Wells Fargo is seeking limited discovery in connection with Class Counsel's  
6 request pursuant to Section 1021.5, and it has filed a motion with the Court seeking leave to take such  
7 discovery from Class Counsel (Dkt. No. 655);

8 WHEREAS, the parties have agreed that, in the briefing and argument on Class Counsel's  
9 request pursuant to Section 1021.5, neither party shall cite to or rely on any of their contemporaneous  
10 subjective evaluations and/or determinations of the financial risks and potential rewards associated with  
11 Class Counsel's representation of the plaintiffs and the class at the time they made vital litigation  
12 decisions, and no briefing, declarations, or argument provided by either party in support of or in  
13 opposition to Class Counsel's request pursuant to Section 1021.5 shall be construed as presenting or  
14 relying upon any such contemporaneous subjective evaluations. Wells Fargo shall not, in opposing  
15 Class Counsel's request pursuant to Section 1021.5, make any arguments criticizing the absence of  
16 evidence regarding such contemporaneous subjective evaluations, or otherwise rely on its own or its  
17 counsel's contemporaneous subjective evaluations and/or determinations regarding the risks and  
18 potential success of this case. This agreement is not intended to affect or limit any argument made by  
19 Class Counsel in support of their request for a fee award from the class judgment. In light of this  
20 agreement, and subject to the Court's approval, Wells Fargo further agrees to withdraw its request for  
21 formal discovery relating to documents and information underlying any such subjective evaluations.

22 WHEREAS, the parties have met and conferred, and have agreed upon a limited set of document  
23 requests from Wells Fargo to Class Counsel with a response date of April 10, 2015. These requests are  
24 as follows:

- 25 1. All documents comprising or containing any agreements between or among Class  
26 Counsel regarding any advancement of costs, or any collection, allocation, or distribution of fees  
27 received, or anticipated or hoped to be received, by Class Counsel in connection with the  
28 representation of any plaintiff or class in this case.

1  
2 WHEREAS, this Stipulation will, with the approval of the Court, result in Wells Fargo  
3 withdrawing its pending Motion for Leave to Take Limited Discovery (Dkt. No. 655) and obviate the  
4 need for further briefing from the parties on that Motion. It will also obviate the need for the Court to  
5 evaluate the various questions about issues raised by the Motion as set out in the Court's Request for  
6 Response and Tentative Comments (Dkt. No. 657).

7 Accordingly,

8 IT IS HEREBY STIPULATED by and between the parties that Class Counsel shall respond to  
9 the agreed-upon set of document requests from Wells Fargo on or before April 10, 2015.

10 IT IS FURTHER STIPULATED by and between the parties that, in the briefing and argument on  
11 Class Counsel's request pursuant to Section 1021.5, neither party shall cite to or rely on any of their  
12 contemporaneous subjective evaluations and/or determinations of the financial risks and potential  
13 rewards associated with Class Counsel's representation of the plaintiffs and the class at the time they  
14 made vital litigation decisions, and no briefing, declaration, or argument provided by either party in  
15 support of or in opposition to Class Counsel's request pursuant to Section 1021.5 shall be construed as  
16 presenting or relying upon any such contemporaneous subjective evaluations. Wells Fargo shall not, in  
17 opposing Class Counsel's request pursuant to Section 1021.5, make any arguments criticizing the  
18 absence of evidence regarding such contemporaneous subjective evaluations, or otherwise rely on its  
19 own or its counsel's contemporaneous subjective evaluations and/or determinations regarding the risks  
20 and potential success of this case.

21 IT IS FURTHER STIPULATED by and between the parties that nothing in this Stipulation shall  
22 be construed as precluding either party from pointing to objective, publicly-available information that  
23 they contend should have a bearing on the Court's evaluation of Class Counsel's request pursuant to  
24 Section 1021.5.

25 IT IS FURTHER STIPULATED by and between the parties that nothing in this Stipulation is  
26 intended to affect or limit any briefing or argument made by Class Counsel in support of their request  
27 for a fee award from the class judgment.  
28



1 IT IS FURTHER STIPULATED by and between the parties that, subject to the approval of the  
2 Court, Wells Fargo's pending Motion for Leave to Take Limited Discovery (Dkt. No. 655) shall be  
3 deemed withdrawn and there shall be no further briefing on that motion or in response to the Court's  
4 Request for Response and Tentative Comments (Dkt. No. 657).

5  
6 DATED: March 26, 2015

COVINGTON & BURLING LLP

7  
8 By: /s/ David M. Jolley  
9 David M. Jolley  
10 Attorneys for Defendants

11  
12 DATED: March 26, 2015

LIEFF CABRASER HEIMANN &  
13 BERNSTEIN, LLP

14  
15 By: /s/ Michael W. Sobol  
16 Michael W. Sobol  
17 Attorneys for Plaintiffs

18  
19 **IT IS SO ORDERED.**

20 Since Wells Fargo has withdrawn its motion for leave to take  
21 limited discovery, this order terminates docket number 655.  
22 The April 23 hearing is hereby vacated.

23 Dated: March 27, 2015.

24   
25 Hon. William A. Asup  
26 United States District Judge  
27  
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